

# Asbestos Personal Injury Litigation in the Federal Courts: MDL-875

Eduardo C. Robreno, Presiding Judge  
United States District Court for the Eastern District of  
Pennsylvania

© June 12, 2009  
As Amended  
September 30,  
2010

# Asbestos: A Health-Legal Crisis

- Former Third Circuit Chief Judge Edward R. Becker described the social effect of Asbestos in Georgine v. Amchem Prods., Inc.:
  - The use of asbestos “is a tale of danger known about in the 1930s, [with] exposure inflicted upon millions of Americans in the 1940s and 1950s, injuries that began to take their toll in the 1960s, and a flood of lawsuits beginning in the 1970s.”

# History of MDL-875

- 1991 – Transfer to the Eastern District of PA by the Judicial Panel on Multidistrict Litigation
- The cases transferred involved personal injury claims resulting from asbestos exposure
- 1996 – Separate docket established for Maritime cases brought under the Jones Act (MARDOC).

# MDL-875: A Typical Asbestos Personal Injury Lawsuit

- Brought by plaintiff(s) in state court
- Removed by defendants and transferred to the E.D. Pa.
- Initially involved one or more plaintiffs suing many defendants.
- MDL-875 is different type of MDL.
- Statute of Limitations issues.
- The Two or multiple disease Rule.
- Choice of law.

# Three Phases of MDL-875

- MDL-875 Phase I: Class Action Effort
  - Supreme Court ruled that a proposed class did not satisfy the requirements of Fed. R. Civ. P. 23 – Georgine v. Amchem Prods.
- MDL-875 Phase II: Legislative Effort
  - Opportunities for mass settlement through legislative action did not materialize
- MDL-875 Phase III: claim by claim resolution of each case.

# DECONSTRUCTING THE CASE

- Admin. Ord. 11: Transfer of all electronic dockets in MDL-875 to the E.D. Pa. CM/ECF system.
- Admin. Ord. 12: Requires each Plaintiff to submit a diagnosing report or opinion upon which they rely in pursuing their action.

# Status of MDL-875 as of 10/1/2008

- About 110,000 plaintiffs, each of whom had sued, on average, over 50 defendants.
- Estimated number of open claims in excess of 10 million.
- Maritime Docket (MARDOC): a separate docket consisting of about 42,000 cases.

# MDL 875 Phase III: Changes in Law & Culture

- The aging of exposed asbestos population
- State tort reforms
- Recognition of problems with the mechanisms used to resolve large numbers of asbestos cases in the 1990s
- Discovery of widespread fraud in the medical diagnosing of silicosis
- Development of new litigation strategies by corporations.
- Bankruptcy of all Major Manufacturers.



# Management Plan

- Operating Principles
- Personnel
- Procedures
- Communication

# Operating Principles

- A commitment to hands-on management of cases;
- Systematic differential diagnostics – all cases cannot be treated similarly;
- And reasonable but fixed deadlines and benchmarks.

# Personnel

- Judge Eduardo C. Robreno, Presiding Judge
- Judge Lowell A. Reed, Jr., U.S. District Judge
- Chief Magistrate Judge Thomas Rueter; Magistrate Judges M. Faith Angell, David Strawbridge, Elizabeth Hey
- Clerk of the Court Michael Kunz, Esq.
- Case Administrator Bruce Lassman, Esq.
- Deputy Clerk Jeff Lucini
- Law Clerk Emily Breslin
- Summary Judgment Law Clerk Mary Pat Stahler
- Magistrate Judge Law Clerk Christopher Lyding, Esq.
- Clerk's Office Personnel

# Procedures

- Motions
- Settlements
- Trials
- Remands
  - By motion of party or by suggestion of the Court.
- Summary Judgment

# Communication

- MDL-875 website provides easily accessible information to litigants. The website includes:
  - Updates – Any activity in the litigation is logged.
  - Master Calendar
  - Opinions
  - Case Listings
  - Steering Committee
  - Daily Updates
  - Statistical Breakdown of the MDL
- Case question hotline and contact information

<http://www.paed.uscourts.gov>

WEBSITE STATISTICS

3/1/2009 - 9/27/2010

DIRECTORY DESCRIPTION	VISITS																			TOTAL
	MAR 2009	APR 2009	MAY 2009	JUN 2009	JUL 2009	AUG 2009	SEP 2009	OCT 2009	NOV 2009	DEC 2009	JAN 2010	FEB 2010	MAR 2010	APR 2010	MAY 2010	JUN 2010	JUL 2010	AUG 2010	SEP 2010	
MDL 875 HOME	2748	2616	4362	4566	4712	4328	3956	4125	3865	3797	3939	3949	5095	4511	4444	4466	4607	3768	2988	76842

SUBDIRECTORY DESCRIPTION	VIEWS/DOWNLOADS																			TOTAL
	MAR 2009	APR 2009	MAY 2009	JUN 2009	JUL 2009	AUG 2009	SEP 2009	OCT 2009	NOV 2009	DEC 2009	JAN 2010	FEB 2010	MAR 2010	APR 2010	MAY 2010	JUN 2010	JUL 2010	AUG 2010	SEP 2010	
UPDATES	238	192	1700	1669	1751	1641	1402	1602	1458	1265	1233	1298	1599	1403	1887	2258	2097	1552	1289	27534
ADMINISTRATIVE ORDERS	526	378	639	763	799	703	586	583	440	449	407	463	686	521	557	738	851	633	604	11326
PROCEDURES	360	271	444	550	481	588	476	431	414	432	362	436	643	475	1039	932	951	855	585	10725
CONTACTS	307	280	551	602	552	545	441	489	429	438	364	408	560	455	577	569	676	488	391	9122
COMPREHENSIVE MDL 875 CALENDAR	314	366	299	783	688	661	536	610	546	524	385	249	294	203	443	203	186	175	274	7739
CASE INFORMATION	300	223	310	381	332	436	364	347	303	232	237	355	368	343	910	911	959	-	-	7311
OPINIONS	0	270	280	263	316	219	209	196	184	174	186	188	251	234	452	739	517	436	404	5518
ADMINISTRATIVE ORDER NO. 12 (AS AMENDED)	292	221	367	382	376	402	425	360	271	274	214	291	443	285	187	147	217	125	119	5398
MARDOC CASE INFORMATION	-	-	-	-	-	-	-	-	176	328	498	430	458	344	522	576	488	358	257	4435
NOTICES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	731	817	787	637	457	3429
MOTION SCHEDULE	369	220	379	362	307	247	183	150	125	138	130	-	-	-	-	-	-	-	-	2610
SUMMARY JUDGMENT PROCEDURES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	521	519	436	456	286	2218
CASEWISE STATISTICAL BREAKDOWN	-	-	-	-	-	18	102	446	315	222	0	0	0	260	144	92	66	194	272	2131
SETTLEMENT CONFERENCE SCHEDULE	193	113	238	221	178	198	185	175	131	168	99	-	-	-	-	-	-	-	-	1899
DISCOVERY PLAN TEMPLATE	-	-	-	-	-	-	-	159	153	180	147	168	255	158	141	75	124	85	66	1711
CASE MANAGEMENT FLOWCHART	-	-	-	-	-	-	-	124	255	249	166	0	87	242	197	117	125	66	59	1687
ABOUT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	462	511	396	312	1681
STEERING COMMITTEES	85	68	114	118	97	110	97	83	95	86	76	82	88	95	44	-	-	-	-	1338
OLD ADMINISTRATIVE ORDERS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	666	-	-	-	-	666
CASES REFERRED TO JUDGE HEY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	370	370

# Integration of Principles and Procedures

- The Flow Chart on the following slide illustrates how the Court is implementing its Case Management principles and procedures.

CASE IS LISTED FOR HEARING

Voluntary  
/Involuntary  
Dismissal of Viable  
Defendants

Non-Viable  
Defendants →  
Bankruptcy docket

Contested  
Compliance with  
Admin. Ords.

Daubert  
Hearing/ other  
Evidentiary  
Hearing

Involuntary  
Dismissal

Plaintiff has complied  
with Admin. Ords. 11 &  
12.

Rule 26(f) Report/ Rule  
16 Conference

Settlement  
Conference

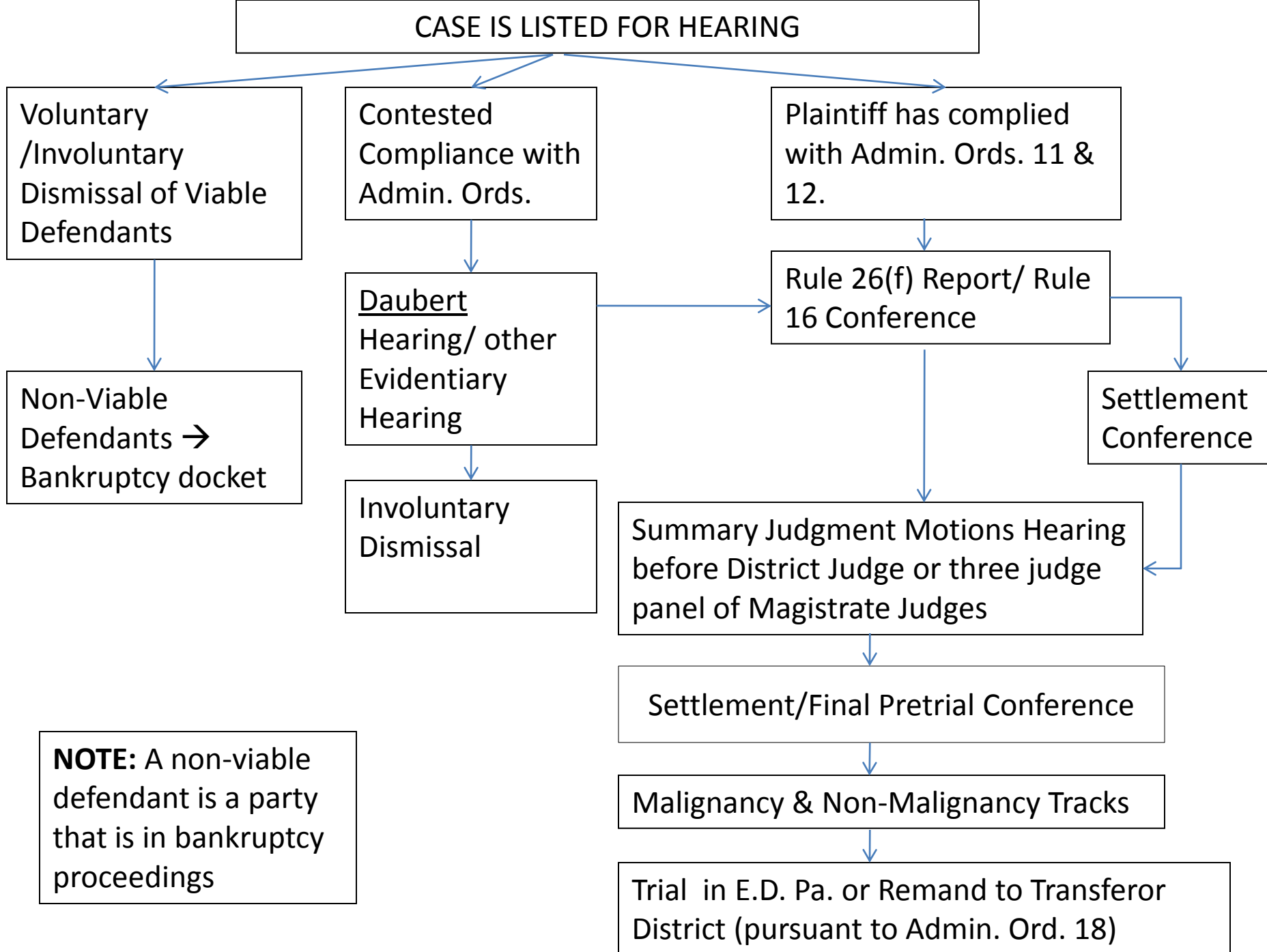
Summary Judgment Motions Hearing  
before District Judge or three judge  
panel of Magistrate Judges

Settlement/Final Pretrial Conference

Malignancy & Non-Malignancy Tracks

Trial in E.D. Pa. or Remand to Transferor  
District (pursuant to Admin. Ord. 18)

**NOTE:** A non-viable  
defendant is a party  
that is in bankruptcy  
proceedings





# Progress since 1/1/2009

- Beginning in January of 2009, the Court has fully implemented the procedures described.
  - The Court began by addressing the “land-based” litigation in MDL-875.
  - In December of 2009, the Court began applying these procedures to the MARDOC cases

UNITED STATES DISTRICT COURT  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION  
875 -IN RE: Asbestos Products Liability Litigation (No.VI)  
**CASES TRANSFERRED IN 2009**  
PENNSYLVANIA EASTERN

	CASES TRANSFERRED TO EDPA	CLAIMS TRANSFERRED TO EDPA	CASES TERMINATED IN EDPA	CLAIMS TERMINATED NATIONWIDE	CASES ADDED TO BANKRUPTCY DOCKET	C.T.O.S FILED
NOVEMBER 2008	1,020	33,327	2	2,304	2,064	0
DECEMBER 2008	833 *	16,744	12	4,278	143	56
JANUARY 2009	2,461	67,309	0	10,681	358	152
FEBRUARY 2009	1,247	33,864	5,221	216,095	222	542
MARCH 2009	1,884	20,115	1,451	282,683	0	762
APRIL 2009	2,432	36,304	3,183	149,129	695	72
MAY 2009	2,220	29,454	9,738	1,151,139	3,890	46
JUNE 2009	5,111	105,026	2,875	146,093	2,366	53
JULY 2009	4,461 *	48,006	4,583	404,157	4,576	24
AUGUST 2009	5,698	933,072	3,878	60,009	1,022	138
SEPTEMBER 2009	11,721	574,814	2,664	2,474,855	317	0
OCTOBER 2009	2,160	51,303	6,007	435,802	645	92
NOVEMBER 2009	1,162	42,360	3,238	77,986	2,618	53
DECEMBER 2009	1,519	39,963	2,176	155,072	4,187	43
<b>TOTAL 11/1/2008 - 12/31/2009</b>	<b>43,929</b>	<b>2,031,661</b>	<b>45,028</b>	<b>5,570,283</b>	<b>23,103</b>	<b>2,033</b>

\* EACH INCLUDE 1 NEW CASE WITH ORIGINAL JURISDICTION

PENNSYLVANIA EASTERN

**LAND CASES TRANSFERRED IN 2010**

	<b>CASES TRANSFERRED TO EDPA</b>	<b>CLAIMS TRANSFERRED TO EDPA</b>	<b>CASES TERMINATED IN EDPA</b>	<b>CLAIMS TERMINATED NATIONWIDE</b>	<b>CASES ADDED TO BANKRUPTCY DOCKET</b>	<b>C.T.O.S FILED</b>
<b>JANUARY 2010</b>	425	12,185	2,409	59,644	727	1
<b>FEBRUARY 2010</b>	967	21,427	797	44,821	270	37
<b>MARCH 2010</b>	79	2,370	8,393	647,192	2,309	0
<b>APRIL 2010</b>	4,511	218,523	3,761	235,284	2,415	31
<b>MAY 2010</b>	2,233	75,420	9,023	553,430	2,726	62
<b>JUNE 2010</b>	1,498	20,241	14,555	1,071,056	770	0
<b>JULY 2010</b>	175	9,858	2,981	111,232	5,438	34
<b>AUGUST 2010</b>	9,553	47,840	12,121	114,556	5,273	91
<b>SEPTEMBER 2010</b>	1,833	33,072	477	7,714	4,814	13
<b>OCTOBER 2010</b>						
<b>NOVEMBER 2010</b>						
<b>DECEMBER 2010</b>						
<b>TOTAL 1/1/2010 - 9/27/2010</b>	<b>21,274</b>	<b>440,936</b>	<b>54,672</b>	<b>2,844,929</b>	<b>24,742</b>	<b>269</b>

# Land-Based Cases 2006-2010

UNITED STATES DISTRICT COURT

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

875 -IN RE: Asbestos Products Liability Litigation (No.VI)

TRANSFERRED ON 7/29/1991

PENNSYLVANIA EASTERN

	CASES TRANSFERRED TO EDPA	CASES TERMINATED IN EDPA	CASES PENDING IN EDPA	
8/1/2006 - 10/31/2008	53,794	1,806	AS OF 10/31/08	<b>51,988</b>
11/1/2008 - 12/31/2009	43,417	45,028	AS OF 12/31/09	<b>50,377</b>
1/1/2010 - 9/29/2010	21,881	54,966	AS OF 9/29/10	<b>17,292</b>
<b>TOTAL</b>	<b>119,092</b>	<b>101,800</b>	AS OF 9/29/10	<b>17,292*</b>

**\*7,265 Referred to Magistrate Judges and Judge Reed**

UNITED STATES DISTRICT COURT  
UNITED STATES DISTRICT COURT  
**EASTERN DISTRICT OF PENNSYLVANIA**

**MDL-875 CASES REFERRED TO**

**JUDGE REED**

AND

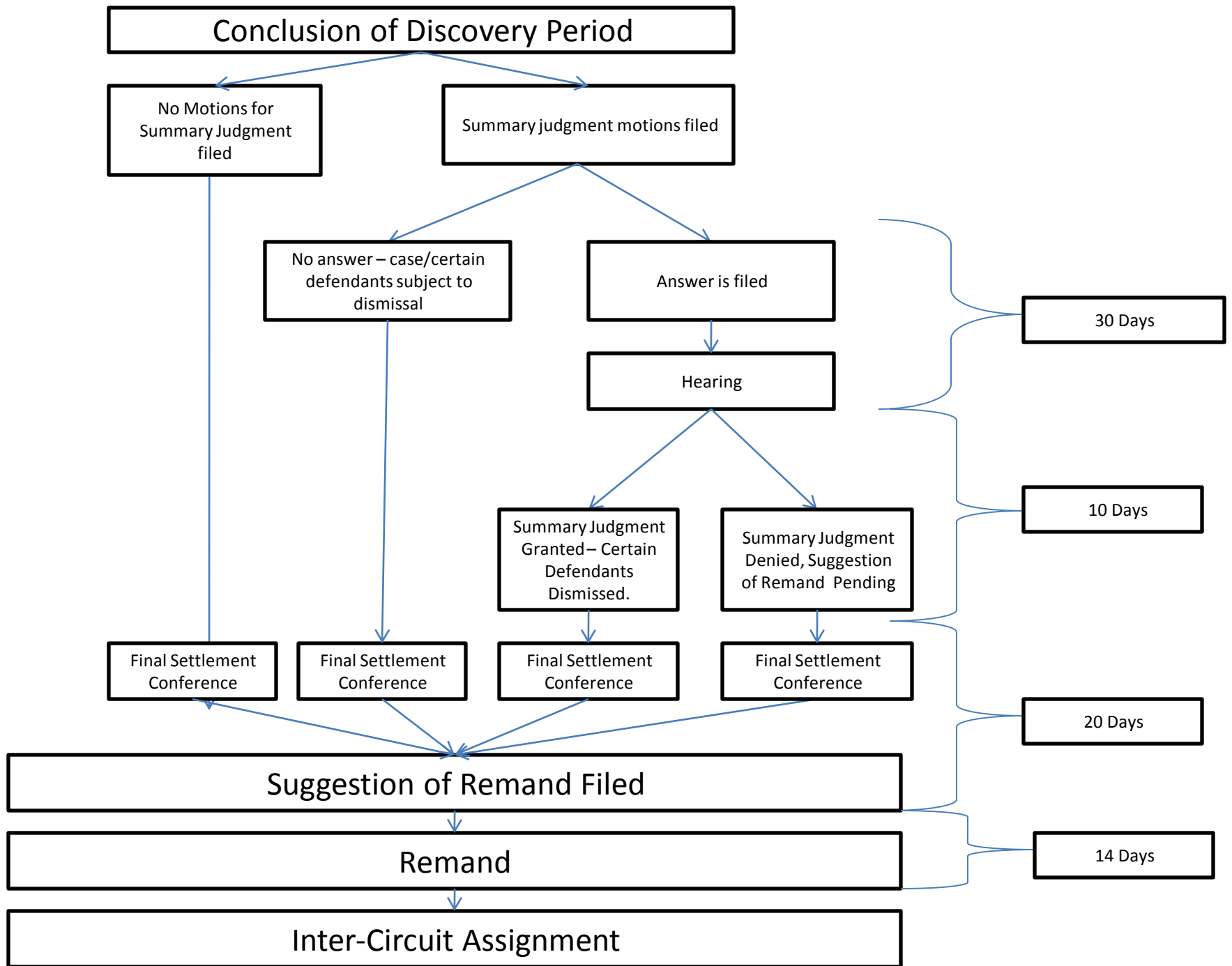
**MAGISTRATE JUDGES**

AS OF 9/27/2010

REFERRAL JUDGE	REFERRALS
REED	2591
HEY	1879
ANGELL	1846
STRAWBRIDGE	532
RUETER	417
TOTAL	7265

# MDL-875 Phase IV: Summary Judgment

- The Court has devised a procedure to deal with the volume of summary judgment motions received.
- The following chart illustrates the procedure.



## Chart A

Transferor District	# of Cases	Hearing Date	Suggestion of Remand Date
VT	1	8.24.2010	9.23.2010
MA	93	9.22.2010	10.22.2010
D.N.H	125	9.22.2010	10.22.2010
D. ME	100	9.22.2010	10.22.2010
D. DEL	1	10.5.2010	11.5.2010
W.D. PA	10	10.5.2010	11.5.2010
D.N.J	approx. 300	10.5.2010	11.5.2010
D. MINN	249	10.5.2010	11.5.2010
W.D. MO	6	10.5.2011	11.5.2010
E.D. MO	37	10.5.2010	11.5.2010
D. IA	5	10.5.2010	11.5.2010
D. KS	2	10.5.2010	11.5.2010
D. UT	9	10.5.2010	11.5.2010
D.N.M	18	10.5.2010	11.5.2010
D.W.Y	4	10.5.2010	11.5.2010
E.D. OK	9	10.19.2010	11.19.2010
N.D. OK	11	10.19.2010	11.19.2010
W.D. OK	10	10.19.2010	11.19.2010
D. OR	1	10.19.2010	11.19.2010
D. MT	2	10.19.2010	11.19.2010
D. ID	2	10.19.2010	11.19.2010
D. NM	3	10.19.2010	11.19.2010
W.D. WA	19	10.19.2010	11.19.2010
E.D. WA	1	10.19.2010	11.19.2010

Approx. 10,027 cases are subject to the Summary Judgment procedure, 5,900 of which are from the E.D. VA.

Updated 9.29.2010



## Chart A cont'd

CAL	12	10.19.2010	11.19.2010
D.C.	1	11.2.2010	12.2.2010
S.D. FL	1	11.2.2010	12.2.2010
N.D.W.V	1	11.2.2010	12.2.2010
S.D.W.V.	9	11.2.2010	12.2.2010
D. ME	1	11.2.2010	12.2.2010
D.NJ	8	11.16.2010	12.16.2010
E.D. KY	53	11.16.2010	12.16.2010
E.D. TN	2	11.16.2010	12.16.2010
W.D. TN	69	11.16.2010	12.16.2010
D. MD	639	12.7.2010	1.7.2011
N.D. FL	16	12.14.2010	1.14.2011
S.D. FL	190	12.14.2010	1.14.2011
S.D. GA	464	12.14.2010	1.14.2011
E.D. TX	1	12.14.2010	1.14.2011
D. ID	1	12.14.2010	1.14.2011
N.D. AL	3	1.11.2011	2.11.2011
S.D. AL	1	1.11.2011	2.11.2011
M.D. MS	3	1.11.2011	2.11.2011
D.DEL	1	1.11.2011	2.11.2011
S.D. TX	47	1.11.2011	2.11.2011
W.D. TX	3	1.11.2011	2.11.2011
N.D. TX	206	1.11.2011	2.11.2011
D.N.H	1	1.11.2011	2.11.2011
D. KY	3	1.25.2011	2.25.2011
M.D. GA	1	1.25.2011	2.25.2011
D. LA	32	1.25.2011	2.25.2011

## Chart A cont'd

D.AK	4	1.25.2011	2.25.2011
D.AZ	1	1.25.2011	2.25.2011
C.D. ILL	160	2.8.2011	3.8.2011
N.D. ILL	5	2.8.2011	3.8.2011
S.D. ILL	45	2.8.2011	3.8.2011
E.D. WI	8	2.8.2011	3.8.2011
D. ME	57	2.8.2011	3.8.2011
S.D. IN	54	2.8.2011	3.8.2011
W.D.N.C.	36	2.22.2011	3.22.2011
E.D.N.C	36	2.22.2011	3.22.2011
M.D.N.C	36	2.22.2011	3.22.2011
S.C.	36	2.22.2011	3.22.2011
N.D. OH	27	2.22.2011	3.22.2011
S.D. OH	27	2.22.2011	3.22.2011
E.D. MI	27	2.22.2011	3.22.2011
W.D. MI	27	2.22.2011	3.22.2011
E.D. TX	50	3.8.2011	4.8.2011
S.D. IN	3	3.8.2011	4.8.2011
D. ME	3	3.8.2011	4.8.2011
S.D.N.Y	337	3.22.2011	4.22.2011
E.D.N.Y	266	4.5.2011	5.5.2011
D. UT	1	4.5.2011	5.5.2012
E.D. TX	1	4.5.2011	5.5.2013
S.D. MS	286	4.26.2011	5.26.2011
E.D. VA	5,900	6.4.2011	7.5.2011

# Summary Judgment Procedure

- As of the response date for motions for summary judgment, the Court can ascertain the number of cases/claims that may be remanded
- If some or all of the motions in a case are opposed, a hearing on those motions will be scheduled within 30 days.

# Summary Judgment Hearings

- Motions for Summary Judgment based on lack of product identification or lack of successor liability will be heard by one or more Magistrate Judges.
- Whether the hearing is in front of a Magistrate Judge or a District Judge, a ruling will issue from the bench or by written memorandum within 10 days.

# Remand

- Once motions for summary judgment are decided, pursuant to Administrative Order 18, the Court will prepare a suggestion of remand.
- While this suggestion of remand is pending, the Court will hold a final settlement conference.
- If settlement is not finalized, the case will be remanded to the transferor districts.
- The transferor court suggests that the transferee court schedule trial in 30 days (intercircuit panel assignments may be utilized).

# Status of MARDOC

- As of December 2009, MARDOC contained approximately 40,000 plaintiffs.
- The Court has separated these cases and will be administering MARDOC independently of the “land-based” litigation
- All of the cases were administratively dismissed in 1996
  - Each case is being reactivated, but is kept separate from “land-based” cases for statistical purposes

# MARDOC

- Differences between MARDOC and the “land-based” litigation
  - Jones Act claims brought under maritime law
  - Almost every individual plaintiff represented by the same counsel
  - By agreement of counsel, all cases filed in one transferor district, the Northern District of Ohio
  - Old cases on paper dockets

# Administration of MARDOC

- Number of cases transferred (or to be transferred): 44,492
- Elimination of claims
  - Plaintiffs' original complaints name approximately 150 defendants in each case.
  - Plaintiffs' Counsel has agreed to dismiss all but 15 defendants in each remaining MARDOC case
- Plaintiffs' counsel has voluntarily dismissed approx. 41,000 cases and is moving forward with 3,384 cases.
- Further administrative procedures to be implemented to promote settlement and/or begin dismissals.



# Nationwide Projections – “Land-Based” Cases

- By June 30, 2010, every case in MDL-875 will have been settled, dismissed, remanded, tried or will be subject to a scheduling order
- Beginning in the spring and summer of 2010, cases which have completed pretrial proceedings in the E.D. Pa. will be remanded to the transferor districts.
  - The preference will be to remand cases in groups.

# Remaining Cases in MDL-875 as of September 29, 2010

UNITED STATES DISTRICT COURT  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION  
875 -IN RE: Asbestos Products Liability Litigation (No.VI)  
TRANSFERRED ON 7/29/1991  
PENNSYLVANIA EASTERN

FROM 2006-2010	CASES	CASES	CASES
	TRANSFERRED	TERMINATED	REMAINING
	TO EDPA	IN EDPA	IN EDPA
LAND CASES	119,092	101,800	17,292
MARDOC	44,492*	41,108	3,384
TOTAL	163,584	142,908	20,676

\*Subject to  
processing of case  
files.